

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JAMES KLUPPELBERG,)	
)	
Plaintiff,)	13 cv 3963
)	
v.)	JUDGE LEFKOW
)	
JON BURGE et al.,)	
)	
Defendants.)	JURY TRIAL DEMANDED

**PLAINTIFF'S DESIGNATION OF DEPOSITION
AND PRIOR TESTIMONY FOR USE AT TRIAL**

Now comes Plaintiff, pursuant to the Court's October 19, 2016 in-court ruling on the Parties Joint Motion For An Extension of Time To File Deposition Designations, Doc. No. 392, allowing the parties to have until October 21, 2016 to submit designations of deposition and prior testimony in connection with the final pretrial order in this case, and makes the designations listed below. Highlighted copies of transcripts corresponding to the testimony referenced in this submission will be filed along with this submission.

1. Defendant Leonard Rolston

- a. *People v. Kluppelberg*, Testimony at Motion *in Limine* Hearing
 - i. Plaintiff intends to read portions of the testimony of Leonard Rolston from the following pages and lines:
264:12-265:19
266:15-268:17
 - ii. Defendant City seeks to add 268:18-23 pursuant to Fed. R. Evid. 106.

2. Kenneth Urbon

- a. *Kluppelberg v. Burge, et al.*, Deposition Testimony
 - i. Plaintiff intends to read portions of the testimony of Kenneth Urbon from the following pages and lines:
6:7-14
6:20-7:11
8:8-23
12:4-21
19:6-22:2
23:6-11
33:2-35:11
35:14-24
44:4-44:23-45:5-47:5
48:20-48:24

69:12 (after “when you had--”)-70:20
 70:24-71:8
 80:7-81:22
 82:18 (after “but”)-83:16
 83:22 (after “well”) - 84:8
 84:19-87:14
 88:17-89:1
 89:12-20
 92:7-93:24
 108:12-109:14
 109:17-113:24
 114:1-3
 114:14-23
 115:16-116:3
 116:11-118:8
 118:14-120:4
 120:11-123:8
 124:3-9
 124:23-125:1
 127:17-128:23
 131:24-134:24
 137:10-139:9
 168:11-172:11
 174:14-175:15
 186:9-187:10
 218:3-219:1
 219:20-220:24
 221:21-225:12
 225:17-226:8
 229:15-230:13
 238:6-8
 238:14-22

- ii. Defendants’ objections and counter-designations to Plaintiff’s proposed testimony are set forth below:

Plaintiff’s Designations	Specific Objections:
12:13-21	foundation (time period)
34:20-24	foundation (time period)
40:19-24	calls for speculation
71:4-8	calls for speculation
99:13-19	calls for speculation
107:1-6	foundation; calls for speculation
113:19-24	calls for speculation
120:1-4	form; foundation; calls for speculation
132:16-24	calls for speculation
133:18-134:2	foundation; calls for speculation
134:3-9	form

134:10-15	asked and answered
157:3-7	form; leading; calls for speculation
172:22-173:10	form; assumes facts not in evidence “you made this cause & origin determination”
198:13-15	calls for speculation
210:19-211:3	form; foundation; calls for speculation
211:4-9	form; foundation
218:11-219:2	relevance; foundation
222:20-223:1	calls for speculation
227:24-228:7	hearsay
iii. Defendants’ Additional Designations Pursuant to FRE 106:	
11:12-15	
18:3-8	
42:7-11	
42:17-43:2	
49:1-16	
76:16-24	
115:9-14	
125:2-8	
125:13-126:7	
126:10	
126:12-127:3	
127:6-16	
128:24-129:10	
130:10-23	
135:1-9 and 12-17	
136:5-7	
145:16-23	
154:17-155:2	
155:14-21	
177:11-23	
178:7-11	
179:18-180:3	
181:19-21	
182:20-183:5	
187:19-188:15	
188:24-189:20	
207:9-16	
208:24-209:10	
212:18-24	
214:5-19	
236:15-237:4	
237:9-22	
238:12	

iv. Plaintiff's Objections to Defendants' Counter-Designations:

Designation	Plaintiff's Objection
42:7-11	R402, 403, foundation, form
126:12-127:3	Improper to read from document; document does not refresh recollection; hearsay
128:24-129:10	Objection to 129:7-10 as to "normal practice" (particularly when read in conjunction with later testimony where says normally did not have a partner at 130:1-23); Hearsay; Does not satisfy FRE 406
130:10-23	Objection to 129:7-10 as to "normal practice"; Hearsay; Does not satisfy FRE 406
135:1-9, 12-17	Calls for speculation
136:5-7	Irrelevant, FRE 402, 403
145:16-23	Calls for speculation
154:17-155:2	Objection, incomplete under FRE 106; if admitted, add 155:3-12 for completeness
155:14-21	Objection, incomplete under FRE106: if admitted, add 155:3-12 for completeness
177:11-23	Calls for speculation; if admitted, add 177:24-178:5 for completeness
187:19-188:15	Objection to 188:3-15 based on hearsay, speculation, no personal knowledge
207:9-18	Calls for speculation and no foundation as to 207:15-18; if admitted, add 204:18-24; 206:3-6; 206:17-207:8 as counter-designations and for completeness under FRE 106
212:18-24	Speculation and no foundation
236:15-237:4	Calls for speculation and form (leading); if admitted, add 237:5-8 for completeness under FRE 106
237:9-22	Form; improper to read from report; no personal knowledge

3. Duane Glassco

a. *Kluppelberg v. Burge, et al.*, Deposition Testimony

i. Plaintiff intends to read portions of the testimony of Duane Glassco from the following pages and lines:

6:15-7:3
8:2-18:4
18:11-22:23
23:13 (starting after "fair enough")-31:6
34:16 (starting after "fair enough")-38:14
39:15-39:19
44:14
44:21-47:14

48:14-49:11
 50:5-52:12
 53:14-58:3
 58:14-64:18
 65:20-68:5
 69:6 (starting after “all right”)-69:24
 70:16-72:8
 73:12-73:14
 73:20-75:15
 76:1-78:5
 78:16-79:8
 79:23-80:4
 80:20 (starting after “thank you for clarifying”)-82:18
 128:15-16
 129:18-130:14
 131:7-134:14

- ii. Defendants’ objections and counter-designations to Plaintiff’s proposed testimony are set forth below:

Plaintiff’s Designations	Specific Objections:
9:6-8	<i>see</i> Defendants’ MIL 5
14:25-15:3	form
17:13-18	form
18:17-20	form
18:24-19:1	form; calls for speculation
21:7-10	form (vague and argumentative)
29:21-30:3	form; assumes facts not in evidence
36:5-7	form
47:4-8	asked and answered
48:19-22	asked and answered
49:9-11	form; calls for speculation
50:25-51:4	form (vague); foundation
51:6-10	form (vague); foundation
54:13-17	form; asked and answered
54:19-21	form (argumentative); improper impeachment
54:23-55:3	form (compound)
55:5-9	form; calls for speculation
56:4-9	form; calls for speculation
56:11-17	form
56:20-21	not responsive to a question/no question pending
57:21-58:3	argumentative
58:14-28	form; foundation
58:20-24	form; assumes facts not in evidence
59:1-5	argumentative; asked and answered
59:7-12	form; assumes facts not in evidence

61:24-62:6	form “tricked”
66:18-22	form; foundation
67:5-15	form; foundation
73:12-18	form; foundation; no response provided
74:7-10	form; foundation; no response provided
74:17-19	asked and answered; no response provided
75:1-4	form
79:5-8	foundation; assumes facts not in evidence (“third visit”)
81:10-15	form; calls for speculation
82:2-9	form
129:18-130:5	form
130:1-5	form
130:7-14	form
iii. Defendants’ Additional Designations Pursuant to FRE 106:	
22:24-23:12	
31:7-8 and 10-18	
34:12-15	
39:6-13	
39:23-41:20	
42:4-18	
43:4-6	
43:10-19	
43:22-25	
47:15-48:24 and 48:13	
68:6-15	
69:25-70:2	
70:9-13	
70:23-71:5	
72:9-25	
82:24-87:10	
87:21-89:6	
90:6:93:24	
94:10-95:6	
100:24-105:17	
106:17-110:20	
111:1-21	
112:6-116:13	
116:16-24	
119:23-121:5	
121:8-21	
125:11-126:9	
127:23-128:13	
128:17-129:1	
129:3-7	
134:2-135:9	

iv. Plaintiff's Objections to Defendants' Counter-Designations are as follows:

Counter-Designation	Plaintiff's Objection
22:24-23:12	Not responsive
31:7-18	FRE 403, See P's MIL No. 8 re: threats, P's MIL No. 6 re: prior bad acts
34:12-15	FRE 403, 404
39:16-13	Not called for under FRE 106, See P's MIL No. 8 re: threats
39:23-41:20	Not called for under FRE 106, See P's MIL No. 8 re: threats
40:25-41:3	Hearsay
42:4-18	FRE 403, See P's MIL No. 8 re: threats
43:10-19	FRE 403, See P's MIL No. 8 re: threats
43:22-25	FRE 403, See P's MIL No. 8 re: threats
70:9-13	Not called for under FRE 106, See P's MIL No. 8 re: threats
83:1-17	Leading
83:18-85:5	Not responsive
85:10-22	Leading
86:21-87-4	FRE 403, See P's MIL No. 8 re: threats
87:5-7	Foundation as to Kluppelberg's knowledge
91:15 (after "about")-91:20	Speculation as to why people called him a snitch, foundation as to what others heard, and hearsay as to what others said
92:12-23	Not responsive
93:7-24	Not responsive
101:8-12	Leading
102:17-24	Leading
103:8-17	Hearsay as to the contents of his affidavit
104:4-6	Hearsay as to the contents of his affidavit
104:10-105:17	Not responsive, hearsay
106:17-22	Hearsay as to the contents of his affidavit
107:23-110:18	Leading, hearsay as to the contents of his affidavit and his statements to ASAs
110:19-20	No answer given
111-1-11	Not proper question and answer
114:11-22	Leading
114:12-18	Leading, not responsive, and FRE 403, 404 as to "burglars"
127:23-128:1	Form, not a proper question/answer

v. **Plaintiff's Additional FRE 106 Designations Based on Defendants' Counter-Designations:**

If Defendants' designations on page 43 are admitted, then Plaintiff also designates 43:7-9, 43:20-21 under FRE 106
 68:21-23 (stop after the word "no" on line 23)
 126:11-127:22

4. Dawn Gramont

a. *People v. Kluppelberg*, Post-Trial Motion Hearing

- i. Plaintiff intends to read portions of the testimony of Dawn Gramont from the following pages and lines:
786:7-790:15

5. Charles Petrosus

a. *People v. Kluppelberg*, Post-Trial Motion Hearing

- i. Plaintiff intends to read portions of the testimony of Charles Petrosus from the following pages and lines:

669:23-672:24

673:11-677:1

677:5-678:12

678:15-680:23

682:18-684:4

684:10-21

685:14-686:2

686:17-687:1

687:5-12

687:16-689:15

689:20-691:16

691:20-693:19

- ii. **Defendants' General Objections:** this testimony is not admissible pursuant to FED. R. EVID. 804; much of the testimony relates to the witness's description of photographs, which have not been identified or produced (see FED. R. EVID. 1008 allowing proof of content of photograph by testimony of the party against whom the evidence is offered); the exhibits should also be barred by FED. R. EVID. 403 because the designated testimony will serve to confuse and potentially mislead the jury and Defendants have no ability to test the foundation for the referenced photographs.

Plaintiff's Designations

674:15-675:4; 676:1-677:1

677:5-13

678:15-680:22

678:23

682:18-684:2

684:10-21

685:14-686:2

686:17-687:1

687:5-12

688:2-689:15

689:20-690:13

690:17-22

691:22-693:19

Specific Objections:

Objection to testimony re: photos

Objection to testimony re: photos

Objection to testimony re: photos
incomplete designation

Objection to testimony re: photos

Objection to testimony re: photos

Objection to testimony re: photos

Objection to testimony re: photos

Objection to testimony re: photos

Objection to testimony re photos

Objection to testimony re photos

Objection to testimony re photos

foundation

6. Ronald Cerevic

a. *People v. Kluppelberg*, Post-Trial Motion Hearing

- i. Plaintiff intends to read portions of the testimony of Ronald Cerevic from the following pages and lines:

764:21-769:2

769:10-771:3

773:12-778:15

- ii. Defendants' objections and counter-designations to Plaintiff's proposed Fed. R. Evid. 804 testimony are set forth below:

General Objection: the proposed testimony is not admissible pursuant to FED. R. EVID 804.

Plaintiff's Designations

773:12-775:7

Specific Objections:

Refers to a map, which has not been identified or produced (*see* FED. R. EVID 1008 allowing proof of content of photograph by testimony *of the party against whom the evidence is offered*); this testimony should also be barred by FED. R. EVID 403 because the designated testimony will serve to confuse and potentially mislead the jury and Defendants have no ability to test the foundation for the referenced map.

7. Andrew Wilson

a. *United States v. Burge*, Trial Testimony

- i. Plaintiff intends to read portions of the testimony of Andrew Wilson from the following pages and lines:

1008:3-4

1008: 8-1037:22

1039:2-1051:23

1052:3-1075:19

1075:24-1095:15

- ii. Defendants request that they have until after the Court rules on their pending Motion *in Limine* No. 18 to bar this testimony to provide specific objections and counter-designations, and Plaintiff does not object.

8. Defendant Jon Burge

a. *Kluppelberg v. Burge, et al.*, Deposition Testimony

- i. Plaintiff intends to read portions of the testimony of Jon Burge from the following pages and lines:

8:14-17

9:4-10:8

11:15-23:14

24:1-27:19

27:24-35:19

36:1-45:7

45:10-54:13

55:6-57:1

57:7-66:7

66:12-88:10

89:4-119:19

119:23-122:16

122:19-123:8

- ii. Defendants did not provide Plaintiff objections or counter designations in time to meet the October 21, 2016 deadline for filing this submission.

b. *United States v. Burge*, Trial Testimony

- i. Plaintiff intends to read portions of the testimony of Jon Burge from the following pages and lines:

2650:24-2651:1

2651:17-2653:8

2374:18-2375:24

- ii. Defendants' objections and counter-designations to Plaintiff's proposed testimony are set forth below:

General Objection: Defendants object to the use of this transcript which has never been produced to Defendants.

Plaintiff's Designations:

2374:18-2375:24

Specific Objection:

Foundation as to time, place and position held at the time of the described conduct; Defendants further object to line 2375:24: "so stipulated" because it is unduly prejudicial (Fed. R. Evid.403) and not relevant to any issues in this case (Fed. R. Evid. 401).

c. *Wilson v. Burge et al.*, Deposition Testimony

- i. Plaintiff intends to read portions of the testimony of Jon Burge from the following pages and lines:

74:12-75:4

- ii. Defendants' objections and counter-designations to Plaintiff's proposed testimony are set forth below:

General Objection: Defendants object to the use of this transcript which is incomplete and was not provided in the course of discovery.

Plaintiff's Designation

74:12-75:4

Specific Objection:

foundation as to time (when this supervision occurred), place (what Area or Unit of CPD), and position (supervisory position held by Burge at the time of the events described in the transcript).

9. Aaron Patterson

a. *Patterson v. Burge, et al.*, Deposition Testimony

i. Plaintiff intends to read portions of the testimony of Aaron Patterson from the following pages and lines:

8:24-9:2

233:14 - 233:19

235:17-236:2

236:7-10, 236:15-20

238:16-19

239:23-24

241:11-17

244:7-19

246:15-249:4

253:21-254:2

255:22-256:6

258:3-6

289:11-290:3

290:12-13

290:18-293:6

305:6-14

305:24-206:6

307:23-308:17

311:6-316:19

321:3-322:24

324:11-332:4

332:22-337:13

337:22-340:9

340:18-22

348:20-349:15

367:22-368:11

368:22-370:3

370:19-373:8

376:20-377:15

378:18-383:7

473:9-474:2

893:23-894:15

- ii. Defendants request that they have until after the Court rules on their pending Motion in Limine No. 18 to bar this testimony to provide specific objections and counter-designations, and Plaintiff does not object.

Plaintiff reserves the right to read testimony in his case-in-chief from witnesses who Defendants have designated as of the time of this submission or any point thereafter.

Plaintiff also reserves the right to alter or amend his designations, counter-designations, or objections to Defendants' designations based on developments at trial, including but not limited to evidentiary rulings made during the pretrial conference and during trial.

Respectfully Submitted,

/s/ Elizabeth Mazur

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CERTIFICATE OF SERVICE

I, Elizabeth Mazur, an attorney, certify that on October 21, 2016, I filed a copy of the foregoing via the Court's electronic filing system and thereby served a copy on all counsel of record.

/s/ Elizabeth Mazur